IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.1028 OF 2006

Shri Shrikant Wamanrao Kale & Anr. ..Petitioners

Versus

Shri Baburao Govind Jadhav & Ors. ..Respondents

Mr.M.M.Sathaye for petitioners

Mr.N.V.Bandiwadekar for respondents

CORAM : P.V.KAKADE, J.

DATE : 6TH MARCH, 2006.

P.C.:

1. Heard the learned counsel for both the parties. Perused the record.

2. The petitioners-tenants have preferred this Petition against the order passed by Addl.District Judge, Nasik dated 13th October, 2005 whereby decreeing the plaintiffs-landlords suit partly holding that the

plaintiffs-landlords were entitled to possession of one room of the suit premises which consisted of two rooms and which was not used for photography business.

3. The plaintiffs filed the suit for eviction of the defendants-tenants from suit premises which consisted of two room premises forming part of house property bearing CTS No.5276 owned by the plaintiffs. One Mr.Wamanrao, deceased father of the defendant no.1 and husband of defendant no.2 obtained the suit premises on rent at the monthly rent of Rs.51/=. The said Wamanrao died in the year 1990 and both the defendants were residing in the suit premises along with Wamanrao. It was the case of the plaintiffs that their family consists of 25 members and they were in need of suit premises bonafide and reasonably for their use and occupation. It was further alleged that the defendants had acquired suitable residence in the town and had started photography business in the suit premises, without the consent of the plaintiffs and as such the suit came to be filed after issuance of vacation notice.

4. The defendants contested the suit, inter alia, denying the allegations and submitted that the suit be

dismissed.

5. The trial court after hearing both the parties and on the basis of available evidence came to the conclusion that plaintiffs' suit for possession deserved to be dismissed and accordingly it was dismissed. The landlords preferred an appeal against the said order. The learned appellate court judge after hearing both the parties came to the conclusion that the plaintiffs had proved their requirement of suit premises as reasonable and bonafide. It was further held that no greater hardship would be caused by passing a decree for possession of part of the suit premises and it was further held that the plaintiffs had proved that the defendants had acquired alternative accommodation and as such appeal was partly allowed and out of two room suit premises decree for one room came to be passed directing that possession of room wherein photography business was conducted by the tenants should not be disturbed.

6. At the outset, it may be noted that the lower appellate court appears to have appreciated the entire evidence on record in proper perspective and therefore, it would brook no interference regarding the findings

recorded on the issues involved. Taking into consideration the decree of part premises passed by the lower appellate court, it is submitted on behalf of the petitioners that splitting of the single tenancy by ordering partial ejectment of the tenant from the premises cannot be passed. In support of this contention the learned counsel for the petitioners sought to put reliance in the case of **Habibunnisa Begaum vs. G.Doraikannu Chettiar reported in AIR 2000 SC 152**, wherein it was held that on single indivisible contract of tenancy cannot be split up in absence of statutory provision to that effect and on that basis partial ejectment of tenant cannot be ordered. However, perusal of the judgment of the Apex Court shows that the said ratio was laid down on totally different set of facts, wherein the suit premises under the tenancy of the tenant was split up by Municipal Authorities giving separate numbers and in fact the premises was separated by a road and thus the premises was assigned separate number. In view of these aspects the question arose whether there was single tenancy or not, and if it was a single tenancy then whether partial ejectment of tenant could be passed or not. In the present case before us the situation is totally different. A dominant user of

the suit premises is a residential premises and one room thereof is used for the purpose of commercial by implied consent of the landlords, which aspect is dealt with in details by the lower appellate court. Under the circumstances, I do not see any reason to hold that it is a case of splitting up of a tenancy and as such the submission made on behalf of the petitioners in that regard has to be rejected.

7. Once we see that there is no legal disability in passing of partial decree as is done by the lower appellate court, there is no reason to interfere with the findings recorded by the lower appellate court as the reasoning adopted and findings recorded by the said court appear to be just, legal and proper and hence no interference is called for. In view of this position, the petition stands dismissed with no order as to costs.

8. At this stage the learned counsel for the petitioners prayed for Stay. In view of the facts and circumstances the order of eviction shall not be operative for the period of eight weeks from the date of this order.